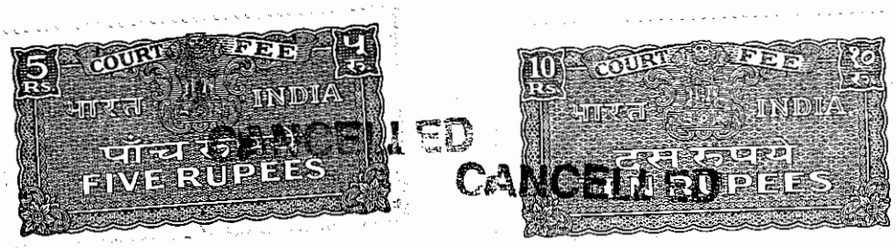

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION PETITION NO. 78 OF 2005

SINGLE BENCH

UNDER SECTION 115 OF CIVIL PROCEDURE CODE, 1908

IN THE MATTER OF :

1. M/s Instromedix (India) Pvt. Ltd.
A-5/A-6, Pragati Chamber,
Ranjit Nagar Commercial Complex
New Delhi – 110 008

2. Sh. R.P. Singh
Executive Director
M/s Instromedix (India) Pvt. Ltd.
A-5/A-6, Pragati Chamber,
Ranjit Nagar Commercial Complex
New Delhi – 110 008 ... Petitioners

Versus

1. M/s Surgi Aid Pharma
Health Care Equipment,
Opp. Collectorate, Near Town Clock,
Hall No.-I, IInd Floor,
G.E.Road,
Raipur – 492 001(C.G.)

Through its Proprietor

Shri K.V. Anand
S/o Sh. Ashwini Kumar Anand
Aged 36 Years
Sole Proprietor
R/o A-5, Surya Apartments,
Katora Talab
Raipur (C.G.) ... Respondent No. 1
Contesting

2. Shri K.V. Anand
S/o Sh. Ashwini Kumar Anand
R/o A-5, Surya Apartments,
Katora Talab
Raipur (C.G.)

Proprietor
M/s Surgi Aid Pharma
Health Care Equipment,
Opp. Collectorate, Near Town Clock,
Hall No.-I, IInd Floor,
G.E.Road,
Raipur – 492 001(C.G.) ... Respondent No. 2
Contesting

P.R. No. 1377/05
Presented by Shri Nikhil Chandrakar
dated 14.6.05

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3. Chairman Cum Managing Director
Shri Anil Aggrawal
M/s Instromedix (India) Pvt. Ltd.
A-5/A-6, Pragati Chamber,
Ranjit Nagar Commercial Complex
New Delhi – 110 008

4. Shri. Anil Das
Manager
M/s Instromedix (India) Pvt. Ltd.
R/o S-312, Sector-5
Plot No. 2
Vivekanand Apartment

5. M/s Sahjipal & Associates
14/34 DDA Complex
Nangal Raya
New Delhi – 110 008

6. Shri S.K. Sahjipal
M/s Sahjipal & Associates
14/34 DDA Complex
Nangal Raya
New Delhi – 110 008

7. Shri M.P. Singh
S/o Shri Inderjeet Singh Rajput
Authorized Representative
M/s Instromedix (India) Pvt. Ltd.
A-5/A-6, Pragati Chamber,
Ranjit Nagar Commercial Complex
New Delhi – 110 008

8. Shantanu Alias Deveshwar Sharma
S/o Shri S.K. Sharma
C/o Surgical & Associate
148/34 R.B. Center
Mangat Ram Complex
New Delhi – 110 046

9. International Cargo Helpers (C.H.A.)
Proprietor Sh. Vipul Jain
S/o Sh. Jitendra Jain
Age 30 Yrs, R/o Pragati Chamber
Ranjit Nagar Commercial Complex
New Delhi – 110 008

Also at

3506, Sector-3
Gurgaon (Haryana)

10. Shri Rajiv Sharma
S/o Sh. Devi Prasad Sharma

11. Shri Nitin Bharal
S/o Sh. D.D. Bharal

12. Shri Narendra Singh
S/o Sh. Trilok Singh

13. Shri Yash Arora
Age 33 Years
S/o Sh. Tilak Raj Arora

All (No. 10 to 13) Partners of
Committed Cargo Care Pvt Ltd,
712, Nagad Diwan
Near I.G. Airport
New Delhi

... Respondent
No. 3 to 13
Proforma
Respondents

PETITION UNDER SECTION 115 OF CPC, 1908 AS BEING FILED AGAINST THE ORDER DATED 05.04.05 WHEREBY THE COURT OF 14TH ADDITIONAL DISTRICT JUDGE RAIPUR HAS DISMISSED PETITIONER'S APPLICATION UNDER ORDER VII, RULE 11 CPC FILED FOR REJECTION OF THE SUIT NO. 46A/04 WHICH WAS FILED FOR RECOVERY OF DAMAGES OF RS.2.18 CRORES FIRSTLY ON THE GROUND FOR IMPLICATION IN THE FALSE CASE REGISTERED AS F.I.R. NO. 158/03 UNDER 409 IPC REGISTERED WITH POLICE STATION GOLE BAZAR, RAIPUR

(4)

A.F.R.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... C.R.No.78/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21/10/2005 Shri D.K.Rustagi and Shri Ali Asgar, counsel for the applicants. Heard on admission and M.(C.)P.No.888/2005. Non-applicants No.1 and 2 filed a suit for recovery of Rs.1,38,00,000/- (Rupees One Crore Thirty Eight Lakhs) against the applicants and other non-applicants averring that they deal in purchase and sale of medical equipments. Applicant No.1 is an Indian Agent for Birds Products Corporation which is a manufacturing company of Ventilator, having applicant No.2 its Executive Director. Non-applicants No. 1 and 2 to purchase ventilator from time to time placed orders from 28/02/2002 to 28/09/2002. They placed four orders. The last order was placed for seventeen Ventilators. So far as other orders are concerned, the ventilators have been received by the non-applicants No. 1 and 2,. but High Seas sale agreement and other documents required to clear the goods from customs have not been remitted to the non-applicants No. 1 and 2. Non-applicants No. 1 and 2 against their order dated 28/09/2002 remitted Rs.1,12,20,000/- (Rupees One Crore Twelve Lakhs Twenty Thousand) by a cheque dated 28/09/2002, but despite that neither the cheque has been encashed nor the Ventilators have been supplied to the non-applicants No. 1 and 2. On behalf of the applicants and other non-applicants No. 3 to 13 non-applicant No.7 lodged a false report	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

against non-applicants No. 1 and 2 under Section 409 of the I.P.C. On 13/09/2003 after investigation, Police closed the case.

A false report was also published in the newspaper which damaged the reputation of non-applicants No. 1 and 2. Non-applicants No. 1 and 2 also explained in their plaint how the applicants and non-applicants No. 3 to 13 are related. Non-applicants No. 1 and 2 also pleaded that causes of action arose on 28/02/2002, 28/06/2002, 16/07/2002 and 28/09/2002 when they placed orders for medical equipment, on 28/09/2002 when it remitted Rs.1,12,20,000/- by cheque. On 11/08/2003 when a false case has been got registered against them and news have been flashed in local news papers. Non-applicants No. 1 and 2 further pleaded that they suffered loss of Rs.23,00,000/- due to immovability of capital, Rs.1,00,00,000/- for lodging a false first information report, Rs.64,00,000/- as a result of publication of false accusation in newspaper and Rs.27,00,000/- due to publication of the case registered under Section 409 of the I.P.C. They calculated total loss of Rs.2,18,00,000/-, but preferred the suit claiming Rs.1,38,00,000/- only and paying court fees thereon, keeping the remaining claim in abeyance.

Applicants who are defendants No. 1 and 2 in the suit filed an application under Order VII, Rule 11 of the C.P.C., for rejection of the plaint unveiling various factors in support of their defence,

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

challenged the causes of action as also on the basis of provisions of Order 2, Rule 2 of the C.P.C., raised the issue of mis-joinder of causes of action and also raised the dispute of court fee and jurisdiction.

Learned trial Court held that all the grounds raised by the applicants in the application have also been raised in written statement, therefore, those objections can be resolved by framing appropriate issues and at this juncture, the objections cannot be tried and disposed of in absence of evidence and accordingly dismissed the application.

Order 7, Rule 11 of the C.P.C. reads as below:

> *"11. Rejection of plaint.- The plaint shall be rejected in the following cases :-*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is property valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff*

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with provisions of Rule 9:)

(Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.)"

Learned counsel for the applicants only raised two grounds in arguments i.e., the suit suffers from mis-joinder of causes of action and non-payment of proper court fee.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

From the plaint averment, it is clear that for immovability of capital, for lodging false report and regarding loss caused to the plaintiffs on account of publication of defamatory imputations in local newspapers specific pleading to support causes of action have been made. From the argument it is clear that the applicants do not want to say that the suit suffers from lack of causes of action, but their contentions is that the suit suffers from mis-joinder of causes of action. Order VII Rule 11 of the C.P.C., so far as cause of action is concerned, is only applicable if from the plaint averment it can be established that the plaint does not disclose the cause of action, hence in the instant case, the plaint does not suffer from the defect that it does not disclose the cause of action.

So far payment of court fee is concerned, it is not disputed that non-applicants No. 1 and 2 in their suit have not paid the court fee on Rs.1,38,00,000/- which is the valuation of the suit, but only dispute is that in plaint non-applicants No. 1 and 2 calculated the damage to the tune of Rs.2,18,00,000/-, but filed the suit for recovery of Rs.1,38,00,000/- and kept the remaining claim in abeyance which is not permissible. Order VII, Rule 11 of the C.P.C., only applies if the relief claimed is under value and on being required by the Court, to correct the valuation plaintiffs fail to do so. Not only the suit has been valued for the purpose of jurisdiction and relief Rs.1,38,00,000/- but also the required

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

court fee has been paid. Therefore, the plaint does not suffer from the defect regarding valuation or payment of court fee.

Taking into consideration the parties impleaded in the suit different dates on which causes of action arose and the objection raised by the applicants as to mis-joinder, it is necessary that the issues regarding mis-joinder of causes of action should be determined at the early stage as is the object of Order II Rule 7 of the C.P.C. The objection regarding mis-joinder raised by the applicants does not require any evidence, therefore, it being issue of law requires to be decided at the early stage of the suit by framing preliminary issue.

Non-applicants No. 1 and 2 although calculated the compensation to the tune of Rs.2,18,00,000/-, but filed a suit for recovery of Rs.1,38,00,000/- and kept the remaining claim in abeyance. Whether for remaining amount separate claim can be preferred is a matter of law which does not require any evidence, therefore, whether keeping remaining claim in abeyance the instant suit for rest of the amount can be proceeded with can be determined in accordance with the provisions of Order II of the C.P.C, at early stage of the suit so as to avoid further complications during the trial.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	From the above discussion, I am of the opinion that the impugned order does not call for any interference by this Court under its revisional jurisdiction, therefore, with the aforesaid observations the revision is dismissed. In the light of above order, M.(C.)P.No.888/2005 for ad-interim order and I.A.No.1743/2005 for urgent hearing stand disposed of. Certified copy as per rules. Sd/- V.K.Shrivastava Judge	

SP/FS/2005-20,000